GOVERNMENT OF PUDUCHERRY

LABOUR DEPARTMENT

(*G.O. Rt. No. 191/AIL/Lab./J/2011, dated 21st November 2011*)

NOTIFICATION

Whereas, the Award in I.D. No. 7/2010, dated 17-8-2011 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. Leo Fasteners Unit-II, Puducherry and Thiru P. Murali over non-employment and unfair labour practice has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G.O. Ms. No. 20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said Award shall be published in the Official gazette, Puducherry.

(By order)

N. APPA RAO,
Under Secretary to Government (Labour).

———

BEFORE THE LABOUR COURT AT PUDUCHERRY

Present : Thiru T. MOHANDASS, M.A., M.L.,
II Additional District Judge,
Presiding Officer, Labour Court,
Pondicherry.

Wednesday, the 17th day of August 2011

I.D. No. 7/2010

P. Murali,
Udalapattu,
Iyyanar Koil Street,
T.N. Palayam Post,
Pondicherry. .. Petitioner.

Versus

The Managing Director,
Leo Fasteners Unit-II,
Thattanchavady,
Pondicherry. .. Respondent.

This petition coming before me for final hearing on 5-8-2011 in the presence of Thiruvalargal S. Lenin Durai, M. Veerappan, William Jerome Vincent and M. Danalatchoumy, advocates for the petitioner, Tmt. Vrintha Mohan, advocate for the respondent, upon hearing both sides, after perusing the case records and having stood over for consideration till this day, this court delivered the following:

AWARD

This industrial dispute arises out of the reference made by the Government of Pondicherry, *vide* G.O.Rt.No.39/AIL/Lab./J/2010, dated 4-3-2010 of the Labour Department, Pondicherry, to resolve the following dispute between the petitioner and the respondent, *viz.,*

(1) Whether the dispute raised by Thiru P. Murali against the management of M/s. Leo Fasteners Unit-II, Puducherry over non-employment is justified or not?

(2) If justified, what relief the petitioner is entitled to?

(3) To compute the relief, if any, awarded in terms of money, if it can be so computed?

2. The petitioner in his claim statement has stated as follows:—

The petitioner joined as Helper in the respondent company on 19-6-2006. He performed his duty in the production continuously for two years and during his service period, he proved his skill and talent and co-operated with the management in all aspects to increase the production and also maintained discipline within the factory premises. In order to protect his service condition and rights, he joined an Employees Union affiliated with BMS and placed to charter of demand to the management along with the other employees. The management got provoked for the act of the petitioner to join in an Employees Trade Union and thereby the management adopted all kinds of unfair labour practice against the petitioner. The management on 5-10-2009 threatened the petitioner with false allegations that he danced during ayudhapooja festival celebration and therefore a show cause letter was issued by the Managing Director stating that the petitioner danced along with other employees at the time of ayudhapooja festival celebration. He denied the said allegation in his letter, dated 7-10-2010. But without giving reasonable opportunity and without any formal enquiry, the management all of a sudden terminated the service of the petitioner along with other six workmen on 14-10-2009. No domestic enquiry has been conducted in this case. Hence, the termination of the petitioner is illegal.

3. In the counter statement, the respondent has stated as follows:—

This respondent denied the averments of the petitioner that he maintained discipline within the factory premises. The petitioner along with several other employees were whistling and dancing in a vulgar manner on 27-9-2009 after completion of pooja and while breakfast was being served to all the employees, which was noticed by the Managing Partner and other senior staff of the company. It is

not possible to describe the vulgarity, but the manner in which the petitioner's hips and body were moving were extremely suggestive. With the fact that many of the company lady employees as well as C.L. ladies were standing around, is what made their behaviour vulgar. The petitioners were also found dancing in such a manner on 26-9-2009 which was the day when the factory was being cleaned prior to the pooja. And that the partner of the company A.L. Shah had also seen this and had stopped the petitioners but their behaviour despite this warning is not understandable. The reply of the petitioner, dated 7-10-2009 is bald, absurd and there is no specific denial or counter for the show cause notice issued by the management on 5-10-2009. Hence, the termination order issued by the management dated 20-10-2009 is just equitable and is warranted on the situation and circumstances failing which great threat, harm gross and discipline and hardships would have been created to the law abiding and harmonious employees especially the lady employees of the company and as such the petitioner is guilty of gross indiscipline, indecent behaviour and willful insubordination. The petitioner was terminated only in accordance with the principles of natural justice and that he was given an opportunity to explain the show cause notice issued by the management but the explanation tendered by him was unjust, unreasonable and non-convincing. Hence, he prays for dismissal of the industrial dispute.

4. On the side of the petitioner, PW.1 was examined and Ex.P1 to Ex.P7 were marked. On the side of the respondent, RW.1 was examined and Ex.R1 was marked.

5. *Now the point for determination is:*

"Whether the petitioner is entitled for the relief sought for?"

6. *On this point:*

The contention of the petitioner is that he was working as Helper in the respondent company from 19-6-2006. It is further contended by the petitioner that he joined in Employees Union affiliated with BMS and hence the respondent management with a false allegation that he whistled and danced in a vulgar manner on 27-9-2009 after completion of pooja and terminated him from service without conducting any domestic enquiry.

7. On the side of the petitioner, the petitioner examined himself as PW1. PW1 in his evidence has deposed as narrated in the claim statement. He marked Ex.P1 copy of the appointment letter, Ex.P2 copy of the service standing order, Ex.P3 copy of the show cause notice issued to the petitioner, dated 5-10-2009, Ex.P4 copy of the explanation given by the petitioner to the respondent management, dated 7-10-2009, Ex.P5 copy of the termination order, dated 14-10-2009, Ex.P6 copy of the petition filed before the Conciliation Officer, dated 19-10-2009 and Ex.P7 copy of the failure report, dated 4-2-2010.

8. *Per contra,* the contention of the respondent is that the petitioner along with several other employees were whistling and dancing in a vulgar manner on 27-9-2009 after completion of pooja and while breakfast was being served to all the employees, which was noticed by the Managing Partner and other senior staff of the company and hence he was issued with the show cause notice and since the explanation submitted by the petitioner was not satisfied, he was terminated from service. In order to prove the said version, the HR. Executive was examined as RW.1. who deposed as narrated in the counter statement.

9. There is no dispute that the petitioner was an employee in the respondent company from 19-6-2006. Further Ex.P1 would confirm the said fact. According to the petitioner, since he was participated in the union activities, he was terminated from service. But the said version of petitioner is denied by the respondent and has stated that the petitioner and some other employees were whistled and danced in a vulgar manner in pooja celebration and hence he was terminated from service after giving due opportunity to him. In order to prove the petitioner has whistled and danced in a vulgar manner in pooja celebration, no witness has been examined. According to RW.1 the said incident was witnessed by the Managing Partner and some of the senior staff. But neither the said Managing Partner nor any one of the senior staff was examined as a witness to prove the said fact. When the reason for terminating the petitioner has been denied by the petitioner, it is for the respondent to prove the same through oral or documentary evidence. But on the side of the respondent, no witness was examined except RW.1. The only document marked on the side of the respondent, the copy of the board resolution as Ex.R1, which is not in any way helpful to the case of the respondent.

10. The learned counsel for the petitioner would argue that the petitioner was terminated from service without conducting any domestic enquiry and hence the issue of termination order to him by the respondent company is a clear case of violation of rule of law, against the principles of natural justice and an act of unfair labour practice and therefore, the said order is illegal and is liable to be set aside.

11. It was also submitted by the learned counsel for the petitioner that there are various case laws, judgments, which indicate clearly that any employee removed from service without taking basic principles, the order of such removal/ termination is to be treated as null and void and it is not maintainable as per the law and he further relied upon the following decision in order to support his claim:-

2011(1) C.L.T.266, Supreme Court of India, Hon'ble Judges D.K. Hain and H.L. Dattu, JJ, Civil Appeal No. 10135 of 2010 (Arising out of SLP © Nos. 7187-7194 of 2008) between Amar Chakaravarthy and Others *Vs.* Maruti Suzuki India Limited.

12. On the other hand, the learned counsel for the respondent submitted that the petitioner was terminated only in accordance with the principles of natural justice and that he was given an opportunity to explain the show cause notice issued by the management but the explanation tendered by him was unjust, unreasonable and non-convincing and hence he was terminated from service.

13. On perusal of records, it is seen that the petitioner was issued with a show cause notice dated 5-10-2009 by the Managing Director and called for an explanation as could be seen from Ex.P3 show cause notice. The records would further reveal that the petitioner has given his explanation on 7-10-2009 denying the contents found in Ex.P3 as could be seen from Ex.P4 and then the petitioner was terminated from service by the respondent company on 14-10-2009 which would evident from Ex.P5. Hence, the said records would clearly prove that no charges have been framed against the petitioner and based on which, the domestic enquiry has not been conducted by the respondent before terminating him from service. It is pertinent to refer the following decisions, which is relevant to this case:-

2002(4) L.L.N. 850:

"Abandonment of service - Even in the case of alleged abandonment, it is necessary for employer to conduct an enquiry, issue a charge sheet and notice to the workman concerned informing him that he is continuously absenting without any sanctioned leave-Admittedly this having not been done in this case the plea of employer about abandonment of service by workman not tenable."

1996(1) L.L.N. 526:

"In this case, the finding recorded by the High Court and the Labour Court is that stones were thrown and the officers were attacked which resulted in grievous injuries to the officers. But it is seen that the appellants alone were not members of the assembly of the workmen standing at BPL bus stop. The Labour Court had discretion under section11A of the Industrial Disputes Act to consider the quantum of misconduct and the punishment. In view of the surging circumstances *viz.,* the workmen were agitating by their collective bargain for acceptance of their demands and when the strike was on the settlement during conciliation proceedings though initially agreed to, was resiled later on. They appear to have attacked the officers when they were going to the factory. Under these circumstances, the Labour Court was well justified in taking a lenient view and in setting aside the order of dismissal and giving direction to reinstate the workmen with a cut of 75 per cent. of the back wages up to the date of award. In our considered view, the discretion exercised by the Labour Court is proper and justified in the above facts and circumstances. The High Court had not adverted to these aspects of the matter. If merely had gone into the question whether the act complained of is a misconduct."

1991(1) LLN Page 817:

"Misconduct - Situs of - Relevancy of - Workmen dismissed without enquiry for misconduct of assaulting engineer of factory - Incident taking place outside factory premises - Such an incident, held, cannot form basis of charge on ground of misconduct to bring it within scope of relevant standing order - Award of Labour Court reinstating workmen on ground that the involvement of workmen in the incident of assault has not been established cannot be interfered with by High Court - High Court cannot go into question of adequacy of evidence."

14. Even in a case of assaulting the employee, the domestic enquiry should be conducted as held by the Hon'ble High Court in the third citation mentioned above. In this case, the respondent's main allegation against the petitioner is that he whistled and danced in the pooja celebration in a vulgar manner that too was not proved by examining any of the witnesses before this court. Further it is not the case of the respondent that the petitioner was regular in misconduct with the employees. There is no past history of the workman to show that the petitioner involved in any misconduct or indiscipline by violating the principles of labour enactments. In this case, no enquiry conducted by the respondent to prove the alleged charges as stated by RW.1 in the presence of lady employees, which act of indiscipline violated the code of conduct within the campus of the industry. The petitioner cannot be denied to purports his defence before the Enquiry Officer. No Enquiry Officer was appointed to conduct the domestic enquiry to verify the charges levelled against the petitioner. In the above circumstances, the termination of the petitioner without conducting the domestic enquiry is against the labour legislation.

15. Further as per Ex.P1, the petitioner was an employee in the respondent company for more than four years without any interruption. Hence, it was necessary

to have given opportunity to the petitioner before coming to the conclusion that he was not found suitable or fit for being continued in service. Neither no such opportunity was given to the petitioner, nor principles of natural justice have been complied with. Hence, I feel that the termination of the petitioner from the service is illegal and the same is liable to be set aside and I feel that 50% of wages can be awarded in the circumstances of the case towards back wages. The petitioner is also entitled for other attendant benefits. Accordingly, this point is answered.

16. In the result, the industrial dispute is allowed. The respondent is hereby directed to reinstate the petitioner with 50% of back wages and other attendant benefits. No costs.

Typed to my dictation, corrected and pronounced by me in the open court on this the 17th day of August 2011.

T. MOHANDASS,
II Additional District Judge,
Presiding Officer,
Labour Court, Pondicherry.

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List of witnesses examined for petitioner :

P.W.1 — 13-6-2011 P. Murali

List of witnesses examined for respondent :

RW.1 — 25-7-2011 Sachin J. Khiya

List of exhibits marked for the petitioner :

Ex.P1 — Appointment letter issued by the respondent to the petitioner, dated 19-6-2006.

Ex.P2 — Copy of service standing order

Ex.P3 — Show cause notice issued by the Managing Director, dated 5-10-2009.

Ex.P4 — Petitioner's explanation letter, dated 7-10-2009.

Ex.P5 — Termination Order issued by the Managing Director, dated 14-10-2009.

Ex.P6 — Petition filed by the petitioner before Conciliation Officer, dated 19-10-2009.

Ex.P7 — Failure report, dated 4-2-2010

List of exhibits marked for the respondent :

Ex.R1 — Board resolution

T. MOHANDASS,
II Additional District Judge,
Presiding Officer,
Labour Court, Pondicherry.

GOVERNMENT OF PUDUCHERRY

LABOUR DEPARTMENT

(*G.O. Rt. No. 192/AIL/Lab./J/2011, dated, 22nd November 2011)*

NOTIFICATION

Whereas, the Award in I.D.No.10/2010, dated 17-8-2011 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. Leo Fasteners Unit-II, Puducherry and Thiru D. Venkatesan over non-employment and unfair labour practice has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G.O. Ms. No.20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said Award shall be published in the official gazette, Puducherry.

(By order)

N. APPA RAO,
Under Secretary to Government (Labour).

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BEFORE THE LABOUR COURT AT PUDUCHERRY

Present : Thiru T. MOHANDASS, M.A., M.L.,
II Additional District Judge,
Presiding Officer, Labour Court,
Pondicherry.

Wednesday, the 17th day of August 2011

I. D. No. 10/2010

D. Venkatesan,
10, Mariamman Koil Street,
Kavundanpalayam,
Pondicherry. . . Petitioner

Versus

The Managing Director,
Leo Fasteners Unit-II,
Thattanchavady,
Pondicherry. . . Respondent

This petition coming before me for final hearing on 5-8-2011 in the presence of Thiruvalargal S. Lenin Durai, M. Veerappan, William Jerome Vincent and M. Danalatchoumy, advocates for the petitioner, Tmt. Vrintha Mohan, advocate for the respondent, upon hearing both sides, after perusing the case records and having stood over for consideration till this day, this court delivered the following:

AWARD

This industrial dispute arises out of the reference made by the Government of Pondicherry, *vide* G. O. Rt. No.42/AIL/ Lab./J/2010, dated 4-3-2010 of the Labour Department, Pondicherry, to resolve the following dispute between the petitioner and the respondent, *viz*.,

(1) Whether the dispute raised by Thiru D.Venkatesan against the management of M/s. Leo Fasteners Unit-II, Puducherry over non-employment is justified or not?

(2) If justified, what relief the petitioner is entitled to?

(3) To compute the relief, if any, awarded in terms of money, if it can be so computed?

2. The petitioner in his claim statement has stated as follows:—

The petitioner joined as Helper in the respondent company on 16-4-2003 and he was confirmed with effect from 17-4-2005. He performed his duty in the production continuously for six years and during his service period, he proved his skill and talent and co-operated with the management in all aspects to increase the production and also maintained discipline within the factory premises. In order to protect his service condition and rights, he joined an Employees Union affiliated with BMS and placed to charter of demand to the management along with the other employees. The management got provoked for the act of the petitioner to join in an Employees Trade Union and thereby the management adopted all kinds of unfair labour practice against the petitioner. The management on 5-10-2009 threatened the petitioner with false allegations that he danced during ayudhapooja festival celebration and therefore a show cause letter was issued by the Managing Director stating that the petitioner danced along with other employees at the time of ayudhapooja festival celebration. He denied the said allegation in his letter, dated 7-10-2010. But without giving reasonable opportunity and without any formal enquiry, the management all of a sudden terminated the service of the petitioner along with other six workmen on 20-10-2009. No domestic enquiry has been conducted in this case. Hence, the termination of the petitioner is illegal.

3. In the counter statement, the respondent has stated as follows:-

This respondent denied the averments of the petitioner that he maintained discipline within the factory premises. The petitioner along with several other employees were whistling and dancing in a vulgar manner on 27-9-2009 after completion of pooja and while breakfast was being served to all the employees, which was noticed by the Managing Partner and other senior staff of the company. It is not possible to describe the vulgarity, but the manner in which the petitioner's hips and body were moving were extremely suggestive. With the fact that many of the company lady employees as well as C.L. ladies were standing around, is what made their behaviour vulgar. The petitioners were also found dancing in such a manner on 26-9-2009 which was the day when the factory was being cleaned prior to the pooja. And that the partner of the company A.L. Shah had also seen this and had stopped the petitioners but their behaviour despite this warning is not understandable. The reply of the petitioner, dated 7-10-2009 is bald, absurd and there is no specific denial or counter for the show cause notice issued by the management on 5-10-2009. Hence, the termination order issued by the management dated 20-10-2009 is just equitable and is warranted on the situation and circumstances failing which great threat, harm gross and discipline and hardships would have been created to the law abiding and harmonious employees especially the lady employees of the company and as such the petitioner is guilty of gross indiscipline, indecent behaviour and willful insubordination. The petitioner was terminated only in accordance with the principles of natural justice and that he was given an opportunity to explain the show cause notice issued by the management but the explanation tendered by him was unjust, unreasonable and non-convincing. Hence, he prays for dismissal of the industrial dispute.

4. On the side of the petitioner, PW.1 was examined and Ex.P1 to Ex.P8 were marked. On the side of the respondent, RW.1 was examined and Ex.R1 was marked.

5. *Now the point for determination is:*

"Whether the petitioner is entitled for the relief sought for?"

6. *On this point*:

The contention of the petitioner is that he was working as Helper in the respondent company from 16-4-2003 and he was confirmed as permanent employee with effect from 17-4-2005. It is further contended by the petitioner that he joined in Employees Union affiliated with BMS and hence the respondent management with a false allegation that he whistled and danced in a vulgar manner on 27-9-2009 after completion of pooja and terminated him from service without conducting any domestic enquiry.

7. On the side of the petitioner, the petitioner examined himself as PW1. PW1 in his evidence has deposed as narrated in the claim statement. He marked Ex.P1 copy of the confirmation letter, Ex.P2 copy of the service standing order, Ex.P3 copy of the show cause notice issued to the petitioner, Ex.P4 copy of the explanation given by the petitioner to the respondent management, Ex.P5 copy of the termination order, dated 20-10-2009, Ex.P6 copy of the petition filed before the Conciliation Officer, dated 17-11-2009 and Ex.P7 copy of the failure report, dated 4-2-2010, Ex.P8 copy of the reply submitted by the petitioner to the respondent, dated 5-11-2009.

8. *Per contra,* the contention of the respondent is that the petitioner along with several other employees were whistling and dancing in a vulgar manner on 27-9-2009 after completion of pooja and while breakfast was being served to all the employees, which was noticed by the Managing Partner and other senior staff of the company and hence he was issued with the show cause notice and since the explanation submitted by the petitioner was not satisfied, he was terminated from service. In order to prove the said version, the HR. Executive was examined as RW.1, who deposed as narrated in the counter statement.

9. There is no dispute that the petitioner was an employee in the respondent company from 16-4-2003 and he was confirmed with effect from 17-4-2005. Further Ex.P1 would confirm the said fact. According to the petitioner, since he was participated in the union activities, he was terminated from service. But the said version of petitioner is denied by the respondent and has stated that the petitioner and some other employees were whistled and danced in a vulgar manner in pooja celebration and hence he was terminated from service after giving due opportunity to him. In order to prove the petitioner has whistled and danced in a vulgar manner in pooja celebration, no witness has been examined. According to RW.1, the said incident was witnessed by the Managing Partner and some of the senior staff. But neither the said Managing Partner nor any one of the senior staff was examined as a witness to prove the said fact. When the reason for terminating the petitioner has been denied by the petitioner, it is for the respondent to prove the same through oral or documentary evidence. But on the side of the respondent, no witness was examined except RW.1. The only document marked on the side of the respondent is the copy of the board resolution as Ex.R1, which is not in any way helpful to the case of the respondent.

10. The learned counsel for the petitioner would argue that the petitioner was terminated from service without conducting any domestic enquiry and hence the issue of termination order to him by the respondent company is a clear case of violation of rule of law, against the principles of natural justice and an act of unfair labour practice and therefore, the said order is illegal and is liable to be set aside.

11. It was also submitted by the learned counsel for the petitioner that there are various case laws, judgments, which indicate clearly that any employee removed from service without taking basic principles, the order of such removal/ termination is to be treated as null and void and it is not maintainable as per the law and he further relied upon the following decision in order to support his claim:

2011(1) C.L.T.266, Supreme Court of India, Hon'ble Judges D.K. Hain and H.L. Dattu, JJ, Civil Appeal No.10135 of 2010 (Arising out of SLP © Nos.7187-7194 of 2008) between Amar Chakaravarthy and Others *Vs.* Maruti Suzuki India Limited.

12. On the other hand, the learned counsel for the respondent submitted that the petitioner was terminated only in accordance with the principles of natural justice and that he was given an opportunity to explain the show cause notice issued by the management but the explanation tendered by him was unjust, unreasonable and non-convincing and hence he was terminated from service.

13. On perusal of records, it is seen that the petitioner was issued with a show cause notice, dated 5-10-2009 by the Managing Director and called for an explanation as could be seen from Ex.P3 show cause notice. The records would further reveal that the petitioner has given his explanation on 7-10-2009 denying the contents found in Ex.P3 as could be seen from Ex.P4 and then the petitioner was terminated from service by the respondent company on 20-10-2009 which would evident from Ex.P5. Hence, the said records would clearly prove that no charges have been framed against the petitioner and based on which, the domestic enquiry has not been conducted by the respondent before terminating him from service. It is pertinent to refer the following decisions, which is relevant to this case:

2002(4) L.L.N. 850:

"Abandonment of service - Even in the case of alleged abandonment, it is necessary for employer to conduct an enquiry, issue a charge sheet and notice to the workman concerned informing him that he is continuously absenting without any sanctioned leave - Admittedly this having not been done in this case the plea of employer about abandonment of service by workman not tenable."

1996(1) L.L.N. 526:

"In this case, the finding recorded by the High Court and the Labour Court is that stones were thrown and the officers were attacked which resulted in grievous injuries to the officers. But it is seen that the appellants alone were not members of the assembly of the workmen standing at BPL bus stop. The Labour Court had discretion under section 11A of the Industrial Disputes Act to consider the quantum of misconduct and the punishment. In view of the surging circumstances *viz.*, the workmen were agitating by their collective bargain for acceptance of their demands and when the strike was on the settlement during conciliation proceedings though initially agreed to, was resiled later on. They appear to have attacked the officers when they were going to the factory. Under these circumstances, the Labour Court was well justified in taking a lenient view and in setting aside the order of dismissal and giving direction to reinstate the workmen with a cut of 75 per cent. of the back wages up to the date of award. In our considered view, the discretion exercised by the Labour Court is proper and

justified in the above facts and circumstances. The High Court had not adverted to these aspects of the matter. If merely had gone into the question whether the act complained of is a misconduct."

1991 (1) L.L.N. Page 817:

"Misconduct - Situs of - Relevancy of - Workmen dismissed without enquiry for misconduct of assaulting engineer of factory - Incident taking place outside factory premises -Such an incident, held, cannot form basis of charge on ground of misconduct to bring it within scope of relevant standing order - Award of Labour Court reinstating workmen on ground that the involvement of workmen in the incident of assault has not been established cannot be interfered with by High Court- High Court cannot go into question of adequacy of evidence."

4. Even in a case of assaulting the employee, the domestic enquiry should be conducted as held by the Hon'ble High Court in the third citation mentioned above. In this case, the respondent's main allegation against the petitioner is that he whistled and danced in the pooja celebration in a vulgar manner that too was not proved by examining any of the witnesses before this court. Further it is not the case of the respondent that the petitioner was regular in misconduct with the employees. There is no past history of the workman to show that the petitioner involved in any misconduct or indiscipline by violating the principles of labour enactments. In this case, no enquiry conducted by the respondent to prove the alleged charges as stated by RW.1 in the presence of lady employees, which act of indiscipline violated the code of conduct within the campus of the industry. The petitioner cannot be denied to purports his defence before the Enquiry Officer. No Enquiry Officer was appointed to conduct the domestic enquiry to verify the charges levelled against the petitioner. In the above circumstances, the termination of the petitioner without conducting the domestic enquiry is against the labour legislation.

15. Further as per Ex.P1, the petitioner was an employee in the respondent company for more than six years without any interruption and his services have also been confirmed. Hence, it was necessary to have given opportunity to the petitioner before coming to the conclusion that he was not found suitable or fit for being continued in service. Neither no such opportunity was given to the petitioner, nor principles of natural justice have been complied with. Hence, I feel that the termination of the petitioner from the service is illegal and the same is liable to be set aside and I feel that 50% of wages can be awarded in the circumstances of the case towards back wages. The petitioner is also entitled for other attendant benefits. Accordingly, this point is answered.

16. In the result, the industrial dispute is allowed. The respondent is hereby directed to reinstate the petitioner with 50% of back wages and other attendant benefits. No costs.

Typed to my dictation, corrected and pronounced by me in the open court on this the 17th day of August 2011.

T. MOHANDASS,
II Additional District Judge,
Presiding Officer, Labour Court,
Pondicherry.

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List of witnesses examined for the petitioner :

PW.1 - 23-6-2011 - D. Venkatesan

List of witnesses examined for the respondent :

RW.1 - 25-7-2011 - Sachin J. Khiya

List of exhibits marked for the petitioner :

Ex.P1 - Confirmation letter issued by the respondent to the petitioner, dated 15-7-2008.

Ex. P2 - Copy of service standing order.

Ex.P3 - Show cause notice issued by the Managing Director, dated 5-10-2009.

Ex. P4 - Petitioner's explanation letter, dated 7-10-2009.

Ex.P5 - Termination order issued by the Managing Director, dated 20-10-2009.

Ex. P6 - Petition filed by the petitioner before Conciliation Officer, dated 17-11-2009.

Ex. P7 - Failure report, dated 4-2-2010.

Ex.P6 - Letter sent by the petitioner to the respondent, dated 5-11-2009.

List of exhibits marked for the respondent:

Ex.R1 - Board resolution

T. MOHANDASS,
II Additional District Judge,
Presiding Officer, Labour Court,
Pondicherry.

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GOVERNMENT OF PUDUCHERRY

LABOUR DEPARTMENT

(*G.O. Rt. No. 193/AIL/Lab./J/2011, dated 22nd November 2011)*

NOTIFICATION

Whereas, the Award in I.D. No. 6/2010, dated 17-8-2011 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. Leo Fasteners Unit-II, Puducherry and Thiru K. Johnpaul over non-employment and unfair labour practice has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the

notification issued in Labour Department's G.O. Ms. No. 20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said Award shall be published in the official gazette, Puducherry.

(By order)

N. Appa Rao,
Under Secretary to Government (Labour).

———

BEFORE THE LABOUR COURT AT PUDUCHERRY

Present : Thiru T. Mohandass, M.A., M.L.,
II Additional District Judge,
Presiding Officer, Labour Court,
Pondicherry.

Wednesday, the 17th day of August 2011

I.D. No. 6/2010

K. Johnpaul,
No.6, Salai Mariamman Koil Street,
Muthialpet, Pondicherry. .. Petitioner

Versus

The Managing Director,
Leo Fasteners Unit-II,
Thattanchavady,
Pondicherry. .. Respondent

This petition coming before me for final hearing on 5-8-2011 in the presence of Thiruvalargal S. Lenin Durai, M. Veerappan, William Jerome Vincent and M. Danalatchoumy, advocates for the petitioner, Tmt. Vrintha Mohan, advocate for the respondent, upon hearing both sides, after perusing the case records and having stood over for consideration till this day, this court delivered the following :

AWARD

This industrial dispute arises out of the reference made by the Government of Pondicherry, *vide* G.O. Rt. No. 38/AIL/Lab./J/2010, dated 4-3-2010 of the Labour Department, Pondicherry, to resolve the following dispute between the petitioner and the respondent, *viz.,*

(1) Whether the dispute raised by Thiru K. Johnpaul against the management of M/s. Leo Fasteners Unit-II, Puducherry over non-employment is justified or not ?

(2) If justified, what relief the petitioner is entitled to ?

(3) To compute the relief, if any, awarded in terms of money, if it can be so computed ?

2. The petitioner in his claim statement has stated as follows:—

The petitioner joined as Helper in the respondent company on 19-12-2005 and he was confirmed with effect from 20-12-2007. He performed his duty in the production continuously for four years and during his service period, he proved his skill and talent and co-operated with the management in all aspects to increase the production and also maintained discipline within the factory premises. In order to protect his service condition and rights, he joined an Employees Union affiliated with BMS and placed to charter of demand to the management along with the other employees. The management got provoked for the act of the petitioner to join in an Employees Trade Union and thereby the management adopted all kinds of unfair labour practice against the petitioner. The management on 5-10-2009 threatened the petitioner with false allegations that he danced during ayudhapooja festival celebration and therefore a show cause letter was issued by the Managing Director stating that the petitioner danced along with other employees at the time of ayudhapooja festival celebration. He denied the said allegation in his letter, dated 7-10-2010. But without giving reasonable opportunity and without any formal enquiry, the management all of a sudden terminated the service of the petitioner along with other six workmen on 20-10-2009. No domestic enquiry has been conducted in this case. Hence, the termination of the petitioner is illegal.

3. In the counter statement, the respondent has stated as follows:—

This respondent denied the averments of the petitioner that he maintained discipline within the factory premises. The petitioner along with several other employees were whistling and dancing in a vulgar manner on 27-9-2009 after completion of pooja and while breakfast was being served to all the employees, which was noticed by the Managing Partner and other senior staff of the company. It is not possible to describe the vulgarity, but the manner in which the petitioner's hips and body were moving were extremely suggestive. With the fact that many of the company lady employees as well as C.L. ladies were standing around, is what made their behaviour vulgar. The petitioners were also found dancing in such a manner on 26-9-2009 which was the day when the factory was being cleaned prior to the pooja. And that the partner of the company A.L. Shah had also seen this and had stopped the petitioners but their behaviour despite this warning is not understandable. The reply of the petitioner dated 7-10-2009 is bald, absurd and there is no specific denial or counter for the show cause notice

issued by the management on 5-10-2009. Hence, the termination order issued by the management dated 20-10-2009 is just equitable and is warranted on the situation and circumstances failing which great threat, harm gross and discipline and hardships would have been created to the law abiding and harmonious employees especially the lady employees of the company and as such the petitioner is guilty of gross indiscipline, indecent behaviour and willful insubordination. The petitioner was terminated only in accordance with the principles of natural justice and that he was given an opportunity to explain the show cause notice issued by the management but the explanation tendered by him was unjust, unreasonable and non-convincing. Hence, he prays for dismissal of the industrial dispute.

4. On the side of the petitioner, PW.1 was examined and Ex.P1 to Ex.P8 were marked. On the side of the respondent, RW.1 was examined and Ex.R1 was marked.

5. *Now the point for determination is:*

"Whether the petitioner is entitled for the relief sought for?"

6. *On this point:*

The contention of the petitioner is that he was working as Helper in the respondent company from 19-12-2005 and he was confirmed as permanent employee with effect from 20-12-2007. It is further contended by the petitioner that he joined in Employees Union affiliated with BMS and hence the respondent management with a false allegation that he whistled and danced in a vulgar manner on 27-9-2009 after completion of pooja and terminated him from service without conducting any domestic enquiry.

7. On the side of the petitioner, the petitioner examined himself as PW1. PW1 in his evidence has deposed as narrated in the claim statement. He marked Ex.P1 copy of the confirmation letter, Ex.P2 copy of the service standing order, Ex.P3 copy of the show cause notice issued to the petitioner, Ex.P4 copy of the explanation given by the petitioner to the respondent management, Ex.P5 copy of the termination order, dated 20-10- 2009, Ex.P6 copy of the reply submitted by the petitioner to the respondent, dated 5-11-2009, Ex.P7 copy of the petition filed before the Conciliation Officer and Ex.P8 copy of the failure report.

8. *Per contra,* the contention of the respondent is that the petitioner along with several other employees were whistling and dancing in a vulgar manner on 27-9-2009 after completion of pooja and while breakfast was being served to all the employees, which was noticed by the Managing Partner and other senior staff of the company and hence he was issued with the show cause notice and since the explanation submitted by the petitioner was not satisfied, he was terminated from service. In order to prove the said version, the HR. Executive was examined as RW.1, who deposed as narrated in the counter statement.

9. There is no dispute that the petitioner was an employee in the respondent company from 9-12-2005 and he was confirmed with effect from 20-12-2007. Further Ex.P1 would confirm the said fact. According to the petitioner, since he was participated in the union activities, he was terminated from service. But the said version of petitioner is denied by the respondent and has stated that the petitioner and some other employees were whistled and danced in a vulgar manner in pooja celebration and hence he was terminated from service after giving due opportunity to him. In order to prove the petitioner has whistled and danced in a vulgar manner in pooja celebration, no witness has been examined. According to RW.1, the said incident was witnessed by the Managing Partner and some of the senior staff. But neither the said Managing Partner nor any one of the senior staff was examined as a witness to prove the said fact. When the reason for terminating the petitioner has been denied by the petitioner, it is for the respondent to prove the same through oral or documentary evidence. But on the side of the respondent, no witness was examined except RW.1. The only document marked on the side of the respondent is the copy of the board resolution as Ex.R1 which is not in any way helpful to the case of the respondent.

10. The learned counsel for the petitioner would argue that the petitioner was terminated from service without conducting any domestic enquiry and hence the issue of termination order to him by the respondent company is a clear case of violation of rule of law, against the principles of natural justice and an act of unfair labour practice and therefore, the said order is illegal and is liable to be set aside.

11. It was also submitted by the learned counsel for the petitioner that there are various case laws, judgments, which indicate clearly that any employee removed from service without taking basic principles, the order of such removal/termination is to be treated as *null and void* and it is not maintainable as per the law and he further relied upon the following decision in order to support his claim:-

2011(1) C.L.T.266, Supreme Court of India, Hon'ble Judges D.K. Hain and H.L. Dattu, JJ, Civil Appeal No. 10135 of 2010 (Arising out of SLP © Nos.7187-7194 of 2008) between Amar Chakaravarthy and Others *Vs.* Maruti Suzuki India Limited.

12. On the other hand, the learned counsel for the respondent submitted that the petitioner was terminated only in accordance with the principles of natural justice and that he was given an opportunity to explain the

show cause notice issued by the management but the explanation tendered by him was unjust, unreasonable and non-convincing and hence he was terminated from service.

13. On perusal of records, it is seen that the petitioner was issued with a show cause notice dated 5-10-2009 by the Managing Director and called for an explanation as could be seen from Ex.P3 show cause notice. The records would further reveal that the petitioner has given his explanation on 7-10-2009 denying the contents found in Ex.P3 as could be seen from Ex.P4 and then the petitioner was terminated from service by the respondent company on 20-10-2009 which would evident from Ex.P5. Hence, the said records would clearly prove that no charges have been framed against the petitioner and based on which, the domestic enquiry has not been conducted by the respondent before terminating him from service. It is pertinent to refer the following decisions, which is relevant to this case:—

2002(4) L.L.N. 850:

"Abandonment of service - Even in the case of alleged abandonment, it is necessary for employer to conduct an enquiry, issue a charge sheet and notice to the workman concerned informing him that he is continuously absenting without any sanctioned leave - Admittedly this having not been done in this case the plea of employer about abandonment of service by workman not tenable."

1996(1) L.L.N. 526:

"In this case, the finding recorded by the High Court and the Labour Court is that stones were thrown and the officers were attacked which resulted in grievous injuries to the officers. But it is seen that the appellants alone were not members of the assembly of the workmen standing at BPL bus stop. The Labour Court had discretion under section11A of the Industrial Disputes Act to consider the quantum of misconduct and the punishment. In view of the surging circumstances *viz.,* the workmen were agitating by their collective bargain for acceptance of their demands and when the strike was on the settlement during conciliation proceedings though initially agreed to, was resiled later on. They appear to have attacked the officers when they were going to the factory. Under these circumstances, the Labour Court was well justified in taking a lenient view and in setting aside the order of dismissal and giving direction to reinstate the workmen with a cut of 75 percent. of the back wages up to the date of award. In our considered view, the discretion exercised by the Labour Court is proper and justified in the above facts and circumstances. The High Court had not adverted to these aspects of the matter. If merely had gone into the question whether the act complained of is a misconduct."

1991 (1) LLN Page 817:

"Misconduct - Situs of - Relevancy of - Workmen dismissed without enquiry for misconduct of assaulting Engineer of factory - Incident taking place outside factory premises -Such an incident, held, cannot form basis of charge on ground of misconduct to bring it within scope of relevant standing order - Award of Labour Court reinstating workmen on ground that the involvement of workmen in the incident of assault has not been established cannot be interfered with by High Court - High Court cannot go into question of adequacy of evidence."

14. Even in a case of assaulting the employee, the domestic enquiry should be conducted as held by the Hon'ble High Court in the third citation mentioned above. In this case, the respondent's main allegation against the petitioner is that he whistled and danced in the pooja celebration in a vulgar manner that too was not proved by examining any of the witnesses before this court. Further it is not the case of the respondent that the petitioner was regular in misconduct with the employees. There is no past history of the workman to show that the petitioner involved in any misconduct or indiscipline by violating the principles of labour enactments. In this case, no enquiry conducted by the respondent to prove the alleged charges as stated by RW.1 in the presence of lady employees, which act of indiscipline violated the code of conduct within the campus of the industry. The petitioner cannot be denied to purports his defence before the Enquiry Officer. No Enquiry Officer was appointed to conduct the domestic enquiry to verify the charges levelled against the petitioner. In the above circumstances, the termination of the petitioner without conducting the domestic enquiry is against the labour legislation.

15. Further as per Ex.P1, the petitioner was an employee in the respondent company for more than four years without any interruption and his services have also been confirmed. Hence, it was necessary to have given opportunity to the petitioner before coming to the conclusion that he was not found suitable or fit for being continued in service. Neither no such opportunity was given to the petitioner, nor principles of natural justice have been complied with. Hence, I feel that the termination of the petitioner from the service is illegal and the same is liable to be set aside and I feel that 50% of wages can be awarded in the circumstances of the case towards back wages. The petitioner is also entitled for other attendant benefits. Accordingly, this point is answered.

16. In the result, the industrial dispute is allowed. The respondent is hereby directed to reinstate the petitioner with 50% of back wages and other attendant benefits. No costs.

Typed to my dictation, corrected and pronounced by me in the open court on this the 17th day of August 2011.

T. MOHANDASS,
II Additional District Judge,
Presiding Officer, Labour Court,
Pondicherry.

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List of witnesses examined for the petitioner :

PW.1 — 23-6-2011 John Paul

List of witnesses examined for the respondent :

RW.1 — 25-7-2011 Sachin J. Khiya

List of exhibits marked for the petitioner:

Ex.P1 — Confirmation letter issued by the respondent to the petitioner, dated 15-7-2008.

Ex.P2 — Copy of service standing order.

Ex.P3 — Show cause notice issued by the Managing Director, dated 5-10-2009.

Ex.P4 — Petitioner's explanation letter, dated 7-10-2009.

Ex.P5 — Termination Order issued by the Managing Director, dated 20-10-2009.

Ex.P6 — Letter sent by the petitioner to the respondent, dated 5-11-2009.

Ex.P7 — Petition filed by the petitioner before Conciliation Officer.

Ex.P8 — Failure report, dated 4-2-2010

List of exhibits marked for the respondent :

Ex.R1 — Board resolution

T. MOHANDASS,
II Additional District Judge,
Presiding Officer, Labour Court,
Pondicherry.

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GOVERNMENT OF PUDUCHERRY

LABOUR DEPARTMENT

(GO. Rt. No. 194/AIL/Lab./J/2011, dated 22nd November 2011)

NOTIFICATION

Whereas, the Award in I. D. No. 11/2010, dated 17-8-2011 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. Leo Fasteners Unit-II, Puducherry and Thiru S. Vinodhkumar over non-employment and unfair labour practice has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G. O. Ms. No. 20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said Award shall be published in the official gazette, Puducherry.

(By order)

N. APPA RAO,
Under Secretary to Government (Labour).

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BEFORE THE LABOUR COURT AT PUDUCHERRY

Present : Thiru T. MOHANDASS, M.A. M.L.,
II Additional District Judge,
Presiding Officer, Labour Court,
Pondicherry.

Wednesday, the 17th day of August 2011

I.D. No. 11/2010

S. Vinodhkumar,
50, Annai Priyadharshini Street,
Jeevanandapuram,
Pondicherry .. Petitioner

Versus

The Managing Director,
Leo Fasteners Unit-II,
Thattanchavady,
Pondicherry .. Respondent

This petition coming before me for final hearing on 5-8-2011 in the presence of Thiruvalargal S. Lenin Durai, M. Veerappan, William Jerome Vincent and M. Danalatchoumy, advocates for the petitioner, Tmt. Vrintha Mohan, advocate for the respondent, upon hearing both sides, after perusing the case records and having stood over for consideration till this day, this court delivered the following:

AWARD

This industrial dispute arises out of the reference made by the Government of Pondicherry, *vide* G. O. Rt. No. 43/AIL/Lab./J/2010, dated 4-3-2010 of the Labour Department, Pondicherry, to resolve the following dispute between the petitioner and the respondent, *viz.*,

(1) Whether the dispute raised by Thiru. S. Vinodhkumar against the management of M/s. Leo Fasteners Unit-II, Puducherry over non-employment is justified or not?

(2) If justified, what relief the petitioner is entitled to?

(3) To compute the relief, if any, awarded in terms of money, if it can be so computed?

2. The petitioner in his claim statement has stated as follows :

The petitioner joined as Helper in the respondent company on 25-2-2008. He performed his duty in the production continuously for two years and during his service period, he proved his skill and talent and co-operated with the management in all aspects to increase the production and also maintained discipline within the factory premises. In order to protect his service condition and rights, he joined an Employees Union affiliated with BMS and placed to charter of demand to the management along with the other employees. The management got provoked for the act of the petitioner to join in an Employees Trade Union and thereby the management adopted all kinds of unfair labour practice against the petitioner. The management on 5-10-2009 threatened the petitioner with false allegations that he danced during ayudhapooja festival celebration and therefore a show cause letter was issued by the Managing Director stating that the petitioner danced along with other employees at the time of ayudhapooja festival celebration. He denied the said allegation in his letter, dated 7-10-2010. But without giving reasonable opportunity and without any formal enquiry, the management all of a sudden terminated the service of the petitioner along with other six workmen on 20-10-2009. No domestic enquiry has been conducted in this case. Hence, the termination of the petitioner is illegal.

3. In the counter statement, the respondent has stated as follows :

This respondent denied the averments of the petitioner that he maintained discipline within the factory premises. The petitioner along with several other employees were whistling and dancing in a vulgar manner on 27-9-2009 after completion of pooja and while breakfast was being served to all the employees, which was noticed by the Managing Partner and other senior staff of the company. It is not possible to describe the vulgarity, but the manner in which the petitioner's hips and body were moving were extremely suggestive. With the fact that many of the company lady employees as well as C. L. ladies were standing around, is what made their behaviour vulgar. The petitioners were also found dancing in such a manner on 26-9-2009 which was the day when the factory was being cleaned prior to the pooja. And that the partner of the company A.L. Shah had also seen this and had stopped the petitioners but their behaviour despite this warning is not understandable. The reply of the petitioner dated 7-10-2009 is bald, absurd and there is no specific denial or counter for the show cause notice issued by the management on 5-10-2009. Hence, the termination order issued by the management, dated 20-10-2009 is just equitable and is warranted on the situation and circumstances failing which great threat, harm gross and discipline and hardships would have been created to the law abiding and harmonious employees especially the lady employees of the company and as such the petitioner is guilty of gross indiscipline, indecent behaviour and willful insubordination. The petitioner was terminated only in accordance with the principles of natural justice and that he was given an opportunity to explain the show cause notice issued by the management but the explanation tendered by him was unjust, unreasonable and non-convincing. Hence, he prays for dismissal of the industrial dispute.

4. On the side of the petitioner, PW1 was examined and Ex.P1 to Ex.P7 were marked. On the side of the respondent, RW1 was examined and Ex.R1 was marked

5. *Now the point for determination is :*

"Whether the petitioner is entitled for the relief sought for?"

6. *On this point :*

The contention of the petitioner is that he was working as Helper in the respondent company from 25-2-2008. It is further contended by the petitioner that he joined in Employee's Union affiliated with BMS and hence the respondent management with a false allegation that he whistled and danced in a vulgar manner on 27-9-2009 after completion of pooja and terminated him from service without conducting any domestic enquiry.

7. On the side of the petitioner, the petitioner examined himself as PW.1. PW.1 in his evidence has deposed as narrated in the claim statement. He marked Ex.P1 copy of the appointment letter, Ex.P2 copy of the service standing order, Ex.P3 copy of the show cause notice issued to the petitioner, dated 5-10-2009, Ex. P4 copy of the explanation given by the petitioner to the respondent management, dated 7-10-2009, Ex. P5 copy of the termination order, dated 14-10-2009, Ex. P6 copy of the petition filed before the Conciliation Officer, dated 19-10-2009 and Ex. P7 copy of the failure report, dated 4-2-2010.

8. *Per contra*, the contention of the respondent is that the petitioner along with several other employees were whistling and dancing in a vulgar manner on 27-9-2009 after completion of pooja and while breakfast was being served to all the employees, which was noticed by the Managing Partner and other senior staff of the company and hence he was issued with the show cause notice and since the explanation submitted by the petitioner was not satisfied, he was terminated from service. In order to prove the said version, the HR. Executive was examined as RW.1, who deposed as narrated in the counter statement.

9. There is no dispute that the petitioner was an employee in the respondent company from 25-2-2008. Further Ex.P1 would confirm the said fact. According to the petitioner, since he was participated in the union activities, he was terminated from service. But the said version of petitioner is denied by the respondent and has stated that the petitioner and some other employees were whistled and danced in a vulgar manner in pooja celebration and hence he was terminated from service after giving due opportunity to him. In order to prove the petitioner has whistled and danced in a vulgar manner in pooja celebration, no witness has been examined. According to RW.1, the said incident was witnessed by the Managing Partner and some of the senior staff. But neither the said Managing Partner nor any one of the senior staff was examined as a witness to prove the said fact. When the reason for terminating the petitioner has been denied by the petitioner, it is for the respondent to prove the same through oral or documentary evidence. But on the side of the respondent, no witness was examined except RW.1. The only document marked on the side of the respondent, the copy of the board resolution as Ex.R1, which is not in any way helpful to the case of the respondent.

10. The learned counsel for the petitioner would argue that the petitioner was terminated from service without conducting any domestic enquiry and hence the issue of termination order to him by the respondent company is a clear case of violation of rule of law, against the principles of natural justice and an act of unfair labour practice and therefore, the said order is illegal and is liable to be set aside.

11. It was also submitted by the learned counsel for the petitioner that there are various case laws, judgments, which indicate clearly that any employee removed from service without taking basic principles, the order of such removal/ termination is to be treated as null and void and it is not maintainable as per the law and he further relied upon the following decision in order to support his claim:

2011(1) C.LT.266, Supreme Court of India, Hon'ble Judges D.K. Hain and H.L. Dattu, JJ, Civil Appeal No.10135 of 2010 (Arising out of SLP © Nos.7187-7194 of 2008) between Amar Chakaravarthy and Others *Vs.* Maruti Suzuki India Limited.

12. On the other hand, the learned counsel for the respondent submitted that the petitioner was terminated only in accordance with the principles of natural justice and that he was given an opportunity to explain the show cause notice issued by the management but the explanation tendered by him was unjust, unreasonable and non-convincing and hence he was terminated from service.

13. On perusal of records, it is seen that the petitioner was issued with a show cause notice, dated 5-10-2009 by the Managing Director and called for an explanation as could be seen from Ex.P3 show cause notice. The records would further reveal that the petitioner has given his explanation on 7-10-.2009 denying the contents found in Ex.P3 as could be seen from Ex.P4 and then the petitioner was terminated from service by the respondent company on 14-10-2009 which would evident from Ex.P5. Hence, the said records would clearly prove that no charges have been framed against the petitioner and based on which, the domestic enquiry has not been conducted by the respondent before terminating him from service. It is pertinent to refer the following decisions, which is relevant to this case:-

2002(4) L.L.N. 850:

"Abandonment of service - Even in the case of alleged abandonment, it is necessary for employer to conduct an enquiry, issue a charge sheet and notice to the workman concerned informing him that he is continuously absenting without any sanctioned leave-Admittedly this having not been done in this case the plea of employer about abandonment of service by workman not tenable."

1996(1) L.L.N. 526:

"In this case, the finding recorded by the High Court and the Labour Court is that stones were thrown and the officers were attacked which resulted in grievous injuries to the officers. But it is seen that the appellants alone were not members of the assembly of the workmen standing at BPL bus stop. The Labour Court had discretion under section 11A of the Industrial Disputes Act to consider the quantum of misconduct and the punishment. In view of the surging circumstances *viz.,* the workmen were agitating by their collective bargain for accept of their demands and when the strike was on the settlement during conciliation proceedings though initially agreed to, was resiled later on. They appear to have attacked the officers when they were going to the factory. Under these circumstances, the Labour Court was well justified in taking a lenient view and in setting aside the order of dismissal and giving direction to reinstate the workmen with a cut of 75 per cent. of the back wages up to the date of award. In our considered view the discretion exercised by the Labour Court is proper and justified in the above facts and circumstances. The High Court had not adverted to these aspects of the matter. If merely had gone into the question whether the act complained of is a misconduct."

1991 (1) L.L.N. Page 817:

"Misconduct - Situs of - Relevancy of - Workmen dismissed without enquiry for misconduct of assaulting engineer of factory - Incident taking place outside factory premises -Such an incident, held, cannot form basis of charge on ground of misconduct to bring it within scope of relevant standing order - Award of Labour Court reinstating workmen on ground that the involvement of workmen in the incident of assault has not been established cannot be interfered with by High Court -High Court cannot go into question of adequacy of evidence."

14. Even in a case of assaulting the employee, the domestic enquiry should be conducted as held by the Hon'ble High Court in the third citation mentioned above. In this case, the respondent's main allegation against the petitioner is that he whistled and danced in the pooja celebration in a vulgar manner that too was not proved by examining any of the witnesses before this court. Further it is not the case of the respondent that the petitioner was regular in misconduct with the employees. There is no past history of the workman to show that the petitioner involved in any misconduct or indiscipline by violating the principles of labour enactments. In this case, no enquiry conducted by the respondent to prove the alleged charges as stated by RW.1 in the presence of lady employees, which act of indiscipline violated the code of conduct within the campus of the industry. The petitioner cannot be denied to purports his defence before the Enquiry Officer. No Enquiry Officer was appointed to conduct the domestic enquiry to verify the charges levelled against the petitioner. In the above circumstances, the termination of the petitioner without conducting the domestic enquiry is against the labour legislation.

15. Further as per Ex.P1, the petitioner was an employee in the respondent company for more than two years without any interruption. Hence, it was necessary to have given opportunity to the petitioner before coming to the conclusion that he was not found suitable or fit for being continued in service. Neither no such opportunity was given to the petitioner, nor principles of natural justice have been complied with. Hence, I feel that the termination of the petitioner from the service is illegal and the same is liable to be set aside and I feel that 50% of wages can be awarded in the circumstances of the case towards back wages. The petitioner is also entitled for other attendant benefits. Accordingly, this point is answered.

16. In the result, the industrial dispute is allowed. The respondent is hereby directed to reinstate the petitioner with 50% of back wages and other attendant benefits. No costs.

Typed to my dictation, corrected and pronounced by me in the open court on this the 17th day of August 2011.

T. MOHANDASS,
II Additional District Judge,
Presiding Officer, Labour Court,
Pondicherry.

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List of witnesses examined by the petitioner :

PW.1 — 23-6-2011 - Vinodh Kumar

List of witnesses examined for the respondent :

RW.1 — 25-7-2011 - Sachin J. Khiya

List of exhibits marked for the petitioner :

Ex.P1 — Appointment letter issued by the respondent to the petitioner, dated 25-2-2008.

Ex.P2 — Copy of service standing order

Ex.P3 — Show cause notice issued by the Managing Director, dated 5-10-2009.

Ex.P4 — Petitioner's explanation letter, dated 7-10-2009.

Ex.P5 — Termination order issued by the Managing Director, dated 14-10-2009.

Ex.P6 — Petition filed by the petitioner before Conciliation Officer, dated 19-10-2009.

Ex.P7 — Failure report, dated 4-2-2010.

List of exhibits marked for the respondent :

Ex.R1 — Board resolution

T. MOHANDASS,
II Additional District Judge,
Presiding Officer, Labour Court,
Pondicherry.

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GOVERNMENT OF PUDUCHERRY

LABOUR DEPARTMENT

(G.O. Rt. No. 195/AIL/Lab./J/2011, dated 22nd November 2011)

NOTIFICATION

Whereas, the Award in I.D.No. 33/2004, dated 5-8-2011 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. Caterpillar India Private Limited, Puducherry and Caterpillar Pattali Employees Union (CITU) over closure has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the

notification issued in Labour Department's G.O. Ms. No. 20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said Award shall be published in the official gazette, Puducherry.

(By order)

N. APPA RAO,
Under Secretary to Government (Labour).

BEFORE THE LABOUR COURT AT PUDUCHERRY

Present : Thiru T. MOHANDASS, M.A. M.L.,
II Additional District Judge,
Presiding Officer, Labour Court,
Pondicherry.

Friday, the 5th day of August 2011

I. D. No. 33/2004

Caterpillar Pattali Employees Union (CITU), 18, Vallalar Street, Kosapalayam, Pondicherry .. Petitioner

Versus

The Managing Director, Caterpillar India (P) Limited, Sedarapet, Pondicherry .. Respondent

This petition coming before me for final hearing on 28-6-2011 in the presence of Thiru D. Soundararajan, advocate for the petitioner, Thiruvalargal L. Swaminathan and I. Ilankumar, advocates for the respondent, upon hearing both sides, after perusing the case records and having stood over for consideration till this day, this court delivered the following:

AWARD

This industrial dispute arises out of the reference made by the Government of Pondicherry, *vide* G.O.Rt.No.121/2004/Lab./AIL/J, dated 23-9-2004 of the Labour Department, Pondicherry, to resolve the following dispute between the petitioner and the respondent, *viz.,*

(1) Whether the closure of the establishment of M/s. Caterpillar India (P) Limited, Sedarapet, Pondicherry is justified? If not, to give appropriate direction?

(2) To what relief/benefits, the affected workers are entitled to?

(3) To compute the relief, if any, awarded in terms of money, if it can be so computed?

2. The petitioner in his claim statement has stated as follows:

The employees of the petitioner union and others were originally employeed in Hindustan Motor Limited and in February 2001, the said company was taken over by Caterpillar India (P) Limited, by absorbing all its employees. The respondent company began its operation with work force over of 200 workmen.

In such course, its employees erstwhile union by name Hindustan Motor Employees Union was changed into Caterpillar Pattali Employees Union for securing and protecting their statutory rights and interest as per law.

The petitioner union raised a lawful charter of demands which includes wage revision. But their demands were not considered by the respondent. Hence, the industrial dispute proceeding was initiated *vide* I.D. No. 2 of 2003 and the same is pending for adjudication as on date on the file of Industrial Tribunal at Pondicherry. In such backdrops, the respondent company without any just and lawful reasons, illegally declared closure on 26-4-2003. Such action was challenged by its employees through their union (petitioner herein) *vide* W.P. No. 14329 of 2003 before the Hon'ble High Court, Madras. The said writ was finally disposed on 7-10-2003 with observation that the union can raise an industrial dispute and seek reference before the Government of Pondicherry and that the respondent can defer its action till final decision being taken by concerned Labour Court. In pursuance of the said order, union had approached the Labour Conciliation Office and raised an industrial dispute challenging the unlawful closure action of the respondent.

The willful non-employment of its employees by the respondent on the alleged reasons of closure is illegal and unsustainable under law for the following reasons:

There mere reading of all communications and correspondences by the petitioner to the respondent would reveal that only with deliberate intent to flee away from its statutory liabilities on lawful demands made by its employees, the respondent had invented vexatious and fictitious reasons for closing the unit.

The respondent action of closing the unit during the pendency of I.D. No. 2 of 2003 on the file Industrial Tribunal, Pondicherry and without obtaining any prior permission therefore is highly illegal and unsustainable under law.

The respondent had carried out its business activities successfully with work force of more than 200 workmen for several years and that since it has not complied with the applicable mandatory provision for causing closure as under law, the purported closure declared by the respondent is illegal and nonest in the eye of law.

The respondent's sudden closure of Pondicherry unit had caused non-employment for more than 200 workmen. Thus all its employees are suffering in starvation and poverty without any employment or income to meet their basic daily needs. Therefore, it is prayed to declare that the closure is illegal and to direct the respondent to reinstate the employees with back wages, closure compensation and other attendant benefits with costs.

3. In the counter statement, the respondent has stated as follows:

The respondent's plant at Pondicherry was put up by Hindustan Motors Limited, the predecessor in-interest to the respondent. The workmen were all offered employment specially with reference to the Pondicherry establishment. Separate settlement was concluded for the workmen of the Pondicherry plant. The Pondicherry plant was always treated as a separate and distinct unit different from that of the unit at Tiruvallur. In February 2001, the HML transferred its earth moving division comprising of Tiruvallur and Pondicherry units to the respondent. The respondent took over the units with all the existing employees protecting their terms and conditions of the employment and their past service. The performance of Pondicherry unit in the year ended December 2001-2002 was not up to the expected level. In the above circumstances, the Board Meeting was conducted and in the said Board Meeting, it is decided to close down the Pondicherry unit. At that time, the Pondicherry unit had on its rolls about 45 workmen. On 25-4-2003 the respondent issued a notice under section 25 FFA of Industrial Disputes Act informing the Government of Pondicherry of its intention to close down the unit with effect from 25-6-2003. The employees were all exempted from reporting for duty from 25-4-2003 with full entitlement to wages for the period up to 25-6-2003.

The closure of Pondicherry unit was not actuated by any sinister motive and it is purely a commercial decision. In fact, after the closure of the factory, the land and building have been sold and the plant and machinery have also been disposed of. Therefore, the issue referred for adjudication does not survive for consideration.

4. On the side of the petitioner, no oral evidence was adduced and marked Ex.P1 to Ex.P12. On the side of the respondent, RW.1 was examined and Ex.R1to Ex.R25 were marked.

5. *Now the point for determination is:*

"Whether the petitioner is entitled for the relief sought for?"

On this point:

6. The main contention of the petitioner is that the employees of the petitioner union and others were originally employed in Hindustan Motor Limited Company functioning from 1994 in Sedarapet unit and then in February 2001 the said company was taken over by Caterpillar India (P) Limited and the respondent company without any just and lawful reason, illegally declared closure on 26-4-2003 and such action was challenged by its employees through their union (petitioner herein) *vide* W.P. No. 14329/2003 on the file of Hon'ble High Court, Madras and the said writ was finally disposed on 7-10-2003 with observation that the union can raise an industrial dispute and seek reference before the Government of Pondicherry and that the respondent can defer its action till final decision being taken by the concerned Labour Court and accordingly, the Conciliation Officer referred the present industrial dispute to adjudicate whether the closure of the respondent company is justified or not.

7. On the side of the petitioner, Ex.P1 copy of the letter sent by the petitioner union to the Conciliation Officer, dated 30-12-2002, Ex.P2 copy of the letter, dated 8-12-2003 sent by the petitioner to the Conciliation Officer, Ex.P3 copy of the judgment passed by the Hon'ble High Court, Madras in W.P. No. 14329/2003, Ex.P4 copy of the letter, dated 3-2-2004 sent by the petitioner union to the Labour Department, Ex.P5 copy of the letter, dated 24-8-2004 sent by the petitioner union to the Commissioner, Labour Department, Ex.P6 copy of the letter, dated 19-4-2004 sent by the petitioner union to the Deputy Commissioner, Labour Department, Ex.P7 copy of the notification, dated 3-4-2003. Ex.P8 copy of the notice sent by the District Court to the respondent company, Ex.P9 copy of the particulars with regard to the employees working in the respondent company with period of service and their salary, Ex.P10 website particulars about the respondent company, Ex.P11 copy of transfer order, dated 5-1-2001 sent to one Balu by the respondent company and Ex.P12 copy of pay slip of the employee, working in the respondent company.

8. The contention of the respondent is that during 1994 the management of Hindustan Motors Limited put up a factory at Pondicherry exclusively for manufacture of 2021 loaders and 50 HX BACKHOE loaders and during early 2003 when the respondent management reviewed the performance of Pondicherry factory, it came to light that the equipment "50 HX BACKHOE loader was not doing well in the market and hence the respondent management had decided to close Pondicherry factory and accordingly, the respondent sent a notice under section 25FFA of Industrial Disputes Act, 1947 on 25-4-2003 to the Government of Pondicherry informing its decision

to close down the Pondicherry factory with effect from 25-6-2003 and they also sent copy of the closure notice to various Labour Department officials and also put up a notice on closure and gave individual order of termination due to closure of the respondent factory to all 62 workmen.

9. To speak about the said fact, on the side of the respondent one C.V. Madhavan, Value Stream Manager of the respondent company was examined as RW1. RW1 in his evidence has deposed that the closure of the respondent factory at Pondicherry is due to manufacturing operations in the factory becoming unviable and the closure of Pondicherry factory is genuine and final. In order to prove that the closure of the respondent at Pondicherry is legal and genuine, he marked Ex.R6 to Ex.R11. Ex.R6 is the letter sent to Secretary to Government, Labour Department. A perusal of Ex.R6 reveals that the respondent company has sent a letter to the Secretary to Government, Labour Department on 25-4-2003, informing about closure of Pondicherry unit with effect from 25th June 2003. A perusal of Ex.R7 reveals that the respondent management has informed about the closure to the staff member of the company on 26-4-2003 and through Ex.R7, all the staff members have been informed that in order to enable them to look for an alternative employment, the respondent company was exempting them from reporting for duty from 26th April 2003 and they would be paid full wages and other benefits for the period up to the date of termination. Through Ex.R8 and Ex.R9, all the employees and the staff have been informed that while the wages for May 2003 will be paid before 7th June 2003, all the other dues will be settled before the closure date. A perusal of Ex.R10 reveals that the respondent company has sent a report under rule 121 of Pondicherry Factories Rules, 1964 to the Inspector of Factories, Pondicherry. Through Ex.R11, the respondent company informed all the employees that in view of the interim order, dated 30-4-2003 of Hon'ble High Court, Madras, their employment will continue even after 25-6-2003, but in the event of writ petition being ultimately dismissed, the wages paid beyond 25-6-2003 will be adjusted against the closure compensation.

10. Section 25 FFA of Industrial Disputes Act deals about closing down any undertaking. Section 25 FFA of Industrial Disputes Act runs as follows:—

> **"25FFA. Sixty days' notice to be given of intention to close down any undertaking.—** (1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:
>
> Provided that nothing in this section shall apply to—
>
> (a) an undertaking in which–
>
> (i) less than fifty workmen are employed, or
>
> (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,
>
> (b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.

Section 25K of Industrial Disputes Act also says about the closure of certain establishments, which runs as follows:—

> **25K. Application of Chapter – VB**. – (1) The provisions of this chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months.

As per the above sections, if the number of employees employed in an organisation is less than fifty, section 25 FFA of Industrial Disputes Act shall be applicable for closure of an organization and if the number of employees is more than 100, section 25 K of Industrial Disputes Act shall be applicable.

11. The learned counsel for the respondent would argue that the respondent was always employing less than 100 workmen at all times, including 12 months preceding closure of factory. In order to prove the same, RW.1 has marked the statement showing the average number of workmen, who had worked per day from 25-6-2002 to 26-4-2003 as Ex.R23 and for the period from 28-11-2002 to 27-11-2003 as Ex.R24. A perusal of Ex.R23 covering for the period from June 2002 to June 2003 reveals that the maximum number of employees worked in the respondent company was 72 during the month of June 2002 and 60 during the month of November 2002 as could be seen from Ex.R24 covering for the period from November 2002 to November 2003. The documents marked under Ex.R1 to Ex.R5 would also prove the said fact. Hence, the respondent has proved through Ex.R23 and Ex.R24 that their company was employing less than 100 employees at all times. Since the total number of employees employed in the respondent company was below 100, the respondent has rightly sent the notice sixty days before the date on which the intended closure as per section 25FFA of Industrial Disputes Act as could be seen from Ex.R6. The respondent company has also sent a report under rule 121 of Pondicherry Factory Rules, 1964 to the Inspector of Factories, Pondicherry, in view of the

closure of the factory from 25-6-2003 under Ex.R10. Under Ex.R13, the respondent company sent an intimation to the Deputy Commissioner of Central Excise, Pondicherry about closure operation of the company and also surrendered the registration certificate to him. Under Ex.R21, notice has been issued to all the employees of the respondent company intimating about their termination with effect from 25-6-2003 and sending final settlement cheque. Hence, the respondent company has correctly followed the procedure to close down the organisation under section 25FFA of Industrial Disputes Act and under these circumstances, the contention of the learned counsel for the petitioner that the respondent had not complied the statutory mandatory requirement as per section 25(O) of Industrial Disputes Act cannot be accepted.

12. The contention of the learned counsel for the petitioner is that Pondicherry and Thiruvallur unit at Chennai are not different and distinct establishment and the employees on the whole are more than 100. He further argued that as per Ex.P10, the respondent company has got more than 3000 employees and more particularly in Thiruvallur unit alone it has 530 employees and hence, the respondent had not complied the statutory mandatory requirement as per section 25(O) of Industrial Disputes Act. In order to prove the said aspect, the petitioner has marked the particulars in respect of the respondent company as Ex.P10 obtained from website. As per Ex.P10, the respondent company was having more than 3000 employees and they having various branches throughout the country at various places including Pondicherry. The learned counsel for the petitioner relied upon the following decisions to support his contentions:—

2011(1) L.L.N. 199 (Bom.)

"Section 25-O - Closure - Industrial Establishment- Once a factory having several divisions employing more than 100 employees is closed down, permission for closure must be obtained under section 25-O - Closure declared without permission from appropriate Government illegal - MSD and ESD integral parts of industrial establishment of respondent company - No material to indicate their independent existence as a legal entity - No need to consider functional integrality between two divisions since they are part of integrated registered company - Closure of MSD effected in breach of provisions of section 25-O - Workmen entitled to all benefits as if undertaking had not been closed."

A.I.R. 1958 Kerala 139:

"If the closure is real and *bona fide,* it will of course be a justifiable closure, but if it is not and spells in the realm of victimisation, it certainly will not be a justifiable closure and the workmen will be entitled to claim appropriate reliefs. A.I.R. 1957 S.C. 95 Dist.)

13. On the other hand, the learned counsel for the respondent would argue that the Pondicherry factory was a separate and independent establishment functioning on its own and various functions like sales, purchase, administration *etc.,* were carried out in the Pondicherry factory for its manufacturing activity and various statutory payments were also made by the Pondicherry factory in respect of its Pondicherry employees. He further argued that the raw materials were exclusively procured by the Pondicherry factory for its manufacturing activities and the products manufactured in the Pondicherry factory were invoiced at Pondicherry and sent to the customers directly. In order to support his contention, he relied upon the following decision:

1970(2) L.L.J. 429 @ 439:

"As regards the company's refusal to transfer the retrenched employees, the Tribunal's finding was clearly against law. The liability of an employee to be transferred and the rights of the company to transfer him did not mean that there was a corresponding obligation on the company to transfer the employee to another branch. No evidence was led by the union to show that if transferred, these workmen could have been absorbed at other places, either because there were vacancies or that the work there was the same as was done by them at Calcutta. There was equally no evidence whether wage scales, dearness allowance and other conditions of service were the same in Madras and other centers."

14. In order to prove the said fact, the respondent has marked the copy of the appointment order, dated 5-8-1995 issued to one Ramamurthy as Ex.R16. A perusal of Ex.R16 reveals that the said Ramamurthy has been appointed as Operator at Pondicherry unit and nowhere stated in the terms and conditions of the offer that he will be transferred from Pondicherry to other units. Further the model standing orders of the respondent company has not been produced by either side to prove their respective claim. It is the duty of the petitioner to prove that Pondicherry unit is having total number of employees in the respondent company with more than 100. On the side of the petitioner, Ex.P10, the website particulars about the respondent company, which would show that the Sedarapet unit is not a separate unit and they are having branches throughout the country at various places including Pondicherry. Hence, the petitioner has proved that Sedarapet unit is not a separate unit. Further on the side of the respondent, the closure notice sent to all the management staff was marked as Ex.R7. A perusal of Ex.R7 reveals that the said notice has been issued under the letter head of Thiruvallur unit. Hence, it is proved from the respondent document itself that Sedarapet unit is not a separate unit and it is one of the branches of respondent company.

15. The learned counsel for the petitioner would submit that when the respondent is decided to close the Sedarapet unit, it is for the respondent company to transfer all its employees to Thiruvallur unit, instead of that the respondent closed their Sedarapet unit without transferring them to other unit, which is against the labour legislations.

16. It is true that the respondent company closed their Sedarapet unit due to loss suffered by them after complying all the formalities as per labour law, as discussed above. But the transfer of employees from one unit to another unit has to be decided by the management according to their convenience. In this case, the available records would show that there were around 72 employees employed in the respondent company at Sedarapet unit. Hence, it is for the petitioner to prove that there were vacancies available in Thiruvallur unit and the said 72 employees could have been accommodated in the said unit to suit their qualification and experience. But on the side of the petitioner no document was filed to prove that there were vacancies in the Thiruvallur unit. Further it is to be seen that whether the financial position would permit the respondent to accommodate all these employees in Thiruvallur unit. Hence, the petitioner cannot claim this issue as right loyal and it is the discretion of the respondent management, who has to see the vacancies available in the other unit, their financial position and other legal formalities. Therefore, the claim of the petitioner in this regard cannot be accepted.

17. The learned counsel for the petitioner would submit that in the cross-examination, RW.1 has admitted that some of the employees worked in the Pondicherry unit has been transferred to Thiruvallur unit after closing the Pondicherry unit.

18. It is true that RW.1 has admitted that some of the employees worked in Pondicherry unit have been transferred to Thiruvallur unit after closing the Pondicherry unit. But transfer of employees from one place to another place is the discretion of the management and no one can interfere with the discretion of the management. In this case, RW.1 has clearly stated that during 1994 the management of Hindustan Motors Limited put up a factory at Pondicherry exclusively for manufacture of 2021 loaders and 50 HX BACKHOE loaders and during early 2003 when the respondent management reviewed the performance of Pondicherry factory, it came to light that the equipment 50 HX BACKHOE loader was not doing well in the market and hence the respondent management had decided to close Pondicherry factory. The respondent has marked the balance sheets for the financial years 2001 to 2004, which would prove the said fact. According to RW.1, after closure of the factory, they sold the premises to another company and they have also surrendered the factory licence and Central Excise licence to the respective authorities and the same were proved through Ex.R14 sale deed, dated 15-12-2006 and Ex.R13 letter sent by the respondent to the Deputy Commissioner of Central Excise, Pondicherry, dated 13-12-2006.

19. The learned counsel for the petitioner further argued that the petitioner union raised a charter of demands including wage revision and their wage revision was not considered and such events forced the petitioner union to cause proceedings in I.D. No. 2/2003 on the file of Industrial Tribunal Court, Pondicherry and only during pendency of I.D. No. 2/2003, the respondent management had declared closure on false and stage managed reasons with *mala fide* intention to defeat the lawful right of charter of various demands including the wage revision. In order to support his contention, he relied upon the following decision:-

2004(3) CTC 515:

> "Termination of services of workman without obtaining approval for dismissal of workman from Industrial Tribunal before whom dispute was pending in which workman was concerned ... ... Workman is entitled to invoke writ jurisdiction and direct employer to grant benefits."

20. The learned counsel for the respondent would argue that only in a case of discharge or dismissal of an employee in respect of misconduct committed by him, there is need to seek an approval or permission during the pendency of industrial dispute and in order to support his claim, he relied upon the following decision:-

2010-ILLJ 438 (Mad.)

> "Section 33(1) - Retrenchment of workman, held did not attract section 33(1), it being not dismissal, discharge or alteration of conditions of service."

21. It is admitted that the wage revision claimed by the petitioner unit against the respondent was referred to the Industrial Tribunal and the same was pending in I.D.No.2/2003 and when the same was pending, the respondent declared closure of Pondicherry unit on 26-4-2003. Hence, the petitioner union filed a petition before the Hon'ble High Court, Madras in W.P. No. 14329 of 2003, challenging the said closure and the Hon'ble High Court issued a direction to the petitioner union to seek reference before the Government of Pondicherry. Accordingly the reference was made to this court. Hence, it is seen from the said records that there is no adverse remark passed by the Hon'ble High Court in W.P. No. 14329/2003 as against the closure of Pondicherry unit by the respondent.

22. Apart from the above, when the industry is started, the employer of the said industry is expected to earn more profit and when the said expectation is failed, the employer is having no other option than to close the industry. In this case, RW.1 has stated that during early 2003, when the respondent management reviewed the performance of the Puducherry factory, it came to light that the equipment 50 HX BACKHOE loader was not doing well in the market and only about 284 units had been produced in the Pondicherry factory and therefore, its manufacturing had to be phased out and thereafter the manufacture of 2021 loader alone in the Pondicherry factory was also not economically viable. RW.1 further stated that the tax exemptions enjoyed by the Pondicherry factory also came to an end during the accounting year 2002-2003 and as a whole the functioning of Pondicherry factory was no longer viable and therefore, the respondent management had to take a hard decision of closing down the Pondicherry factory. In the above circumstances, I feel that the closure of the respondent factory at Pondicherry is genuine and justified.

23. When an organization is closed down for any reason, the employees of the said organization are entitled to receive the closure compensation as per section 25FFF of Industrial Disputes Act.

24. In this case all the 62 workmen, who were working in the factory, were also issued with copy of closure notice. They were also exempted from reporting for work from 25-4-2003 with a promise to pay them wages till 25-6-2003. On 7-10-2003 the writ petition was disposed giving liberty to the union to challenge the closure by raising an industrial dispute. In the said order, it was made clear that the payments made by the respondent from 26-6-2003 to 7-10-2003 should not be recovered and that such payments would be subject to the outcome of the industrial dispute. This Tribunal also feels that the payment for the period from 26-6-2003 to 7-10-2003 should not be recovered from the petitioner as per the order of the Hon'ble High Court, Madras. The whole approach of industrial law is that the employer and employee do not stand on an equal bargaining position. Industrial law recognises that the workers are in a weaker position than the employers who have financial resources, management skills, connections *etc.* Hence, the whole object of industrial law is to help the weaker section in the society (the workmen) and give them protection from exploitation. The workmen, who joined in the respondent company, had their anticipation to continue their tenure till their superannuation. But unfortunately the respondent closed down the Pondicherry unit with effect from 25-6-2003. Due to the said closure, the employees, who were working in the said company are suffering from starvation and poverty without any employment, as rightly pointed out by the learned counsel for the petitioner. In the above circumstances, the substantial amount towards closure compensation will meet their basic daily needs. Accordingly, the workmen listed in Ex.P9 are entitled for substantial amount towards the closure compensation. Accordingly this point is answered.

25. In the result, the industrial dispute is partly allowed. The closure of respondent management is justified. However, taking into consideration of facts and circumstances of the case, the workmen listed in Ex.P9 are entitled to the compensation as detailed below:-

Workmen Nos.1 to 3

K. Ramalingam, V. Ramamurthy and R. Sivakoumar. . . ₹ 75,000 each

Workmen Nos.4 to 10

M. Anandan, S. Gopinathan, G. Palanivelu, B. Radhakrishnan, N. Lalbahadur, T. Muruganandam and V. Prasannakumar. . . ₹ 73,000 each

Workmen Nos. 11 to 18

Balasubramanian, B. Krishnakumar, R. Maruthamuthu, J. Mohan, C. Murugesan, G. Periannan, Rajesh Reygaren and Sundaramoorthy. . . ₹ 67,000 each

Workmen Nos. 19 to 30

S. Anandan, S. Chokalingam, M. Ravi, M. Sambath, Sivasubramaniyan, B. Sundararajan, S. Veeramani, M. Balu, T. Murugavel, C. Nagarajan, S. Pachiappan and E. Iyyanar. . . ₹ 65,000 each

Workmen Nos. 31 and 32

R. Janakiraman and K. Saravanan . . ₹ 60,000 each

Workmen Nos. 33 to 39

P. Annadurai, K. Babu, V.M. Ravi, S. Subramanian, R. Sundar, Balasubramanian and S. Nithiyanandam. . . ₹ 56,000 each

Workmen Nos. 40 to 45

N. Kannabiran, R. Kothandapani, K. Natarajan, A. Velmurugan, V. Nandhan and M. Sugumar. . . ₹ 52,000 each

Workmen Nos. 46 to 49

K. Sivakumar, T. Swaminathan, S. Ravichandran and G. Viswanathan. . . ₹ 26,000 each

Workmen Nos. 50 and 51

R. Ganesh and V.K. Mariappan . . ₹ 60,000 each

Workmen No.52 and 53

D. Ramesh and R. Ragunathan . . ₹ 52,000 each

No costs.

Typed to my dictation, corrected and pronounced by me in the open court on this the 5th day of August 2011.

T. MOHANDASS,
II Additional District Judge,
Presiding Officer, Labour Court,
Pondicherry.

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List of witnesses examined for the petitioner : Nil.

List of witnesses examined for the respondent :

RW.1 — 8-4-2010 C.V. Madhavan

List of exhibits marked for the petitioner :

Ex.P1 — Copy of letter, dated 30-12-2002 sent to Conciliation Officer by union.

Ex.P2 — Copy of letter, dated 8-12-2003 sent to Conciliation Officer by union.

Ex.P3 — Copy of order of Hon'ble High Court, Madras, dated 7-10-2003.

Ex.P4 — Copy of letter, dated 3-2-2004 sent by the union to Labour Department.

Ex.P5 — Copy of letter, dated 24-8-2004 sent by the union to Commissioner, Labour Department.

Ex.P6 — Copy of letter, dated 19-4-2003 sent by the union to Deputy Commissioner, Labour Department.

Ex.P7 — Copy of notification, dated 3-4-2003

Ex.P8 — Copy of notice, dated 8-4-2003 of Principal District Judge, Pondicherry.

Ex.P9 — Copy of list of workmen with salary and period of service.

Ex.P10 — Respondent company particulars taken from website.

Ex.P11 — Copy of transfer of employment letter, dated 5-1-2001.

Ex.P12 — Copy of pay slip of the employee

List of exhibits marked for the respondent :

Ex.R1 — Copy of the muster roll for the period 1-6-2002 to 31-3-2003.

Ex.R2 — Copy of the wage register for the period 1-6-2002 to 31-3-2003.

Ex.R3 — Copy of the E.S.I. half yearly returns

Ex.R4 — Copy of monthly provident fund contribution statement from 1-6-2002 to 31-8-2003.

Ex.R5 — Copy of balance sheets for the financial year 2001 to 2004.

Ex.R6 — Letter of respondent to Secretary to Government, dated 25-4-2003.

Ex.R7 — Notice of the respondent management to the staff, dated 26-4-2003.

Ex.R8 — Letter of respondent to all employees, dated 30-5-2003.

Ex.R9 — Notice of respondent to all staff, dated 30-5-2003.

Ex.R10 — Letter of respondent, dated 5-6-2003

Ex.R11 — Notice of respondent to employees, dated 24-6-2003.

Ex.R12 — Order of Hon'ble High Court, dated 7-10-2003.

Ex.R13 — Letter of respondent to Deputy Commissioner, dated 13-12-2006.

Ex.R14 — Sale deed, dated 15-12-2006 regarding sale of factory.

Ex.R15 — Statement regarding the settlement of provident fund.

Ex.R16 — Appointment order, dated 5-8-1995 issued to the workman.

Ex.R17 — Memorandum of understanding, dated 19-4-2000.

Ex.R18 — Order of Hon'ble High Court, dated 30-4-2003.

Ex.R19 — Order of Hon'ble High Court, dated 14-8-2003.

Ex.R20 — Order of Hon'ble High Court, dated 7-10-2003.

Ex.R21 — Copy of notice, dated 28-11-2003 issued to the employees.

Ex.R22 — Reply, dated 22-12-2003 from the workman.

Ex.R23 — Statement showing average number of workmen.

Ex.R24 — Statement showing average number of workmen.

Ex.R25 — File containing acknowledgment of 50 workmen.

T. MOHANDASS,
II Additional District Judge,
Presiding Officer, Labour Court,
Pondicherry.